

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION AT CHICAGO**

LARRY J. COLLIER,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	Case No.: 08 C 227
	)	
WAL-MART STORES, INC. and	)	
WAL-MART REAL ESTATE BUSINESS	)	
TRUST,	)	
	)	
Defendants.	)	

**DEFENDANTS' AFFIRMATIVE DEFENSE TO PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

TO: Bridget A. Mitchell  
One N. LaSalle St. #1325  
Chicago, IL 60602

Thomas J. Tyrrell  
1020 South Arlington Heights Rd.  
Arlington Heights, IL 60005

NOW COME the Defendants, WAL-MART STORES, INC. and WAL-MART REAL ESTATE BUSINESS TRUST, by and through their attorneys, MOMKUS McCLUSKEY, LLC, and as and for their Affirmative Defense to Plaintiff's First Amended Complaint, state as follows:

1. That Plaintiff has filed a Complaint for injuries and damages allegedly arising out of an incident on November 16, 2005 at the Wal-Mart store located at 1555 North Rand Road, in Palatine, Illinois.

2. At all times relevant hereto, Plaintiff had the duty to act with reasonable care and caution to ensure his own safety and well-being.

3. That if Plaintiff sustained injury in the manner alleged in his Complaint at Law, which is specifically denied, then Defendants aver that Plaintiff breached his duty of care for his own personal safety through the following acts of negligence or negligent omissions:

- a. Failed to observe and avoid a ladder;
- b. Failed to observe an open and obvious condition;
- c. Failed to request assistance if and when he needed it to ensure his own safety; and
- d. Was otherwise negligent.

4. Plaintiff's own acts of negligence or negligent omissions were more than fifty percent (50%) of the proximate cause of her alleged injuries or, in the alternative were the contributing proximate cause of those alleged injuries.

WHEREFORE, the Defendants prays that judgment be entered in their favor and against Plaintiff, LARRY J. COLLIER, or, in the alternative, that any judgment entered in favor of the Plaintiff and against this Defendant be reduced by a percentage commensurate with the Plaintiff's own degree of culpability.

Respectfully Submitted,

MOMKUS McCLUSKEY, LLC

By: \_\_\_\_\_  
Pamela L. Pierro

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